IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.3 OF 2006

WITH

CRIMINAL APPLICATION NO.231 OF 2007

Ramavadh Ramdhani Pal : Appellant.

versus

The State of Maharashtra : Respondent.

Smt.Anjali Patil i/by Ms.Geeta Rasario for the appellant.

Ms.R.M.Gadhvi, APP, for the State.

CORAM : D.G.DESHPANDE

SMT.NISHITA MHATRE, JJ.

DATED : APRIL 27, 2007.

ORAL ORDER

1. This is an appeal filed by the accused against the order of the trial Court by which he has been convicted for the offences punishable under Section 279 and sentenced to suffer 6

months R.I., under Section 379 and sentenced to suffer 3 months R.I., under section 427 and sentenced to suffer 2 years R.I. under Section 307 and sentenced to suffer life imprisonment and under Section 181 of the Motor Vehicle Act and sentenced to suffer 3 months R.I. All the sentences were to run concurrently.

2. Heard the learned advocate Smt.Anjali Patil for the accused and learned APP Ms.Gadhvi for the State. The learned advocate for the accused contended that even if the case of the prosecution is accepted as it is, there cannot be conviction under Section 307 of the Indian Penal Code followed the sentence of imprisonment for life.

3. The prosecution case, in brief, is that on 15th March 2005 one Vipul Shah, resident of Sion, Mumbai was proceeding from five garden to his house at 7.55 a.m. through his Maruti Zen bearing No.MH-01-U-8016 and when he reached near Vitthal Mandir, Sion at 8.15 a.m., he immediately noticed that one Police Jeep coming in high speed from backside. He realised that the said police jeep is going to dash his vehicle, he, therefore,

gave a signal by hand to stop the vehicle. But the driver of the jeep gave dash to his Maruti Zen from backside, due to which his car went towards divider near the bridge and later on stopped. At the same time the said jeep also went ahead and gave dash to one motor cyclist from backside and later on the said jeep gave dash to one motor taxi. One motorcyclist also fell down on the ground. The motor taxi also tumbled down. The said jeep also gave dash to one BEST bus from backside near sion circle and later on the said jeep stopped. Police persons and other persons immediately arrested the driver of the jeep bearing No.MH-01-BA-464. On inquiry the said person who drove the police jeep disclosed his name Ramgopal Ramdhani Pal. The name of the motorcyclist was Mahesh Parkar and the name of the taxi driver was Jayram Koli and the number of the BEST bus was MH-1-9-128. Due to dash and negligent driving o the said jeep, the motorcyclist, taxi driver and BEST bus received damage and complainant vipul shah also received injuries. The motorcyclist also received injuries and the injury was sustained by the taxi driver to his middle finger. It is the case of the prosecution that the accused drove

the police jeep in high speed, rashly and negligently as to endanger the human life and not given response though the complainant gave signal to stop the police jeep and the accused intentionally drove the said vehicle with knowledge to kill the complainant and injured the other persons.

4. We confronted the learned APP as to how the accused could be convicted under Section 307 of the Indian Penal Code in the facts and circumstances of the case particularly when the trial court has convicted him under sections 279, 379 and 427 of the Indian Penal Code.

5. Regarding injuries suffered by two victim, the learned advocate for the accused produced certified copies of the injury certificates Exhibits 15 and 17 of Mahesh Bavkar and Jayram Koli. The injuries suffered by them are simple injuries. These certificates are taken on record. Considering this fact the conviction of the accused under Section 307 of the Indian Penal Code is totally uncalled for, but his conviction under remaining sections is proper. The learned advocate for the accused

submitted that since the date of judgment the accused is in custody. Hence this appeal is required to be allowed partly. We, therefore, pass the following order:-

:ORDER:

The appeal is partly allowed.

The conviction of the accused under Section 307 of the Indian Penal Code is set aside. He is acquitted of the offence punishable under Section 307 of the Indian Penal Code.

His conviction under other sections of the Indian Penal Code is maintained. However, his sentence is reduced to the period already under gone.

The accused is in custody from the date of judgment i.e. 18.11.2005. Hence the period already undergone will be sufficient under all the heads.

The accused is set at liberty forthwith if not required in any other case.

The Criminal Application No.231 of 2007 does not survive. It is disposed of.

Appeal is disposed of accordingly.

[D.G.DESHPANDE,J]

[SMT.NISHITA MHATRE, J]